

AIA Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Develop and manage construction of the Infrastructure Improvements, including the following: (i) on approximately 21 acres of the Infrastructure Site, construct approximately 800 paved parking spaces and drives, and eight lighted tennis courts, adjacent to the Recreation Center, and all landscaping and irrigation, (ii) on portions of the Stadium Site, approximately 700 paved parking spaces and drives and approximately five linear miles of walking trails (portions of which will be located on the Property and adjacent property currently owned by the City), (iii) on portions of both the Infrastructure Site and the Stadium Site, all necessary sanitary sewer, potable water, storm sewer, water detention facilities, public and private streets, sidewalks and related improvements, and (iv) making the Pad Site in Pad-Ready Condition, all in accordance with the Infrastructure Improvements Plans.

Capitalized terms used above are as defined in that certain Rock Chalk Park Development Agreement ("Development Agreement") by and among the City of Lawrence, Kansas ("City"), Owner (as "RCP"), Bliss Sports, LC, and Contractor (as "Bliss Sports II"). The Project is further defined in Exhibit F and Exhibit G to the Development Agreement.

THE OWNER:

(Name, legal status and address)

RCP, LLC, a Kansas limited liability company
Attn. Monte Soukup
1891 Constant Avenue
Lawrence, Kansas 66047-3743

THE CONTRACTOR:

(Name, legal status and address)

BLISS SPORTS II, LC
209 Fallcreek Road
Lawrence, Kansas 66049

THE ARCHITECT:

(Name, legal status and address)

Gould Evans and Paul Werner

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, or (2) a Change Order.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes, but is not limited to, delivery, unloading, uncrating, assembling, setting-in-place, leveling, adjusting, completely installing, and cleaning up any debris.

§ 1.1.3.1 The Contractor shall thoroughly investigate all local trade jurisdictional rules and rulings and shall be held completely responsible for the settlement of any disputes with the same arising from fabrication, installation, or completion of the Work under this Contract.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Intentionally deleted.

§ 2.2.2 Intentionally deleted.

§ 2.2.3 The Owner shall furnish those surveys in Owner's possession describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be

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entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information in Owner's possession required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, then in addition to any other remedy the Owner may have, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 ARCHITECT'S COMPENSATION FOR SERVICES TO REMEDY DEFECTIVE WORK

When Additional Services of the Architect are required because of defective Work, neglect, failure, deficiencies, or default by the Contractor, the Architect's compensation for such services shall be paid by the Contractor.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the

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purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If the Contractor performs any Work knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to Architect, the Contractor shall thereby assume responsibility for performance and bear the attributable cost for correction.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor performs any Work knowing it involves a recognized nonconformity in the Contract Documents without such notice to Architect, the Contractor shall thereby assume responsibility for performance and bear the attributable cost for correction.

§ 3.2.4 If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor, all Subcontractors, and delivery personnel associated with performing the Work of the Contract shall conduct themselves in accordance with all applicable Owner policies while on the job site or any Owner property. Applicable policies may include, but are not limited to, tobacco, drugs, language, weapons, and sexual harassment. Failure of a person to comply will be a cause for his or her immediate dismissal from the project.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.1.1 Products are generally specified by ASTM (American Society of Testing Materials) or other referenced standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

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§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.1 The Owner will obtain from the City and furnish to the Contractor a sales and compensating tax exemption certificate number from the State of Kansas for the construction of this Project, which must be provided by Contractor to all Subcontractors and material suppliers. Upon completion of the Project, the Contractor must furnish a project completion certification to the Owner and the Kansas Department of Revenue, Business Tax Bureau, Robert B. Docking State Office Building, Topeka, Kansas. All invoices must be retained by the Contractor(s) for a period of five (5) years and are subject to audit by the Kansas Department of Revenue.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner will pay for the customary permits and governmental fees, licenses and inspections associated with obtaining water service, electrical service and sanitary sewers. The Contractor shall be responsible for obtaining all necessary permits, licenses and inspections and coordinating the Work. If the Owner and Contractor agree that the Contractor will pay for a permit or fee that Owner is actually responsible for, then the cost of such permit or fee will be included in a Change Order without consideration for any profit, mark-up, or administrative fee.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. Intentionally deleted.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made objection. The Contractor shall not change the superintendent without the Owner's consent.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

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§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and a Change Order has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located, to be engaged by Contractor as provided in the Development Agreement and the Contract Documents. That person or entity, or its authorized representative, is

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identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Contractor shall employ a successor architect as to whom the Owner has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents until the date the Architect issues the final Certificate for Payment, and with Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2 below. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and

completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 Intentionally deleted.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 Intentionally deleted.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Intentionally deleted.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

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§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.1.5 The Contractor shall assume all responsibility and costs in complying with federal, state, and local regulations for equal employment opportunity, anti-discrimination, safety, and other regulations. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, ethnic group, national origin, age, or sexual orientation. The Contractor shall take affirmative action to ensure that applicants are employed, and that applicants are treated during employment, without regard to that applicant's race, religion, color, sex, ethnic group, national origin, age, or sexual orientation. Such action shall include, but not limited to, employment, upgrading, demotion, transfer, recruitment, advertisement, layoff termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these non-discrimination provisions.

§ 6.1.6 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, ethnic group, national origin, age, or sexual orientation.

§ 6.1.7 The Contractor shall include all of Sections 6.1.5 through 6.1.7 in every subcontract or purchase order, and shall require each Subcontractor and material and equipment supplier to include Sections 6.1.5 through 6.1.7 in each of their subcontracts and purchase orders, so that such provisions will be binding upon each Subcontractor, Sub-Subcontractor, and material and equipment supplier.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the City, Owner, Contractor and Architect.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the City, Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 That there is to be no adjustment in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 Intentionally deleted.

§ 7.3.2 Intentionally deleted.

§ 7.3.3
(Paragraphs deleted)
Intentionally deleted.

§ 7.3.4 Intentionally deleted.

§ 7.3.5 Intentionally deleted.

§ 7.3.6 Intentionally deleted.

§ 7.3.7
(Paragraphs deleted)
Intentionally deleted.

§ 7.3.8 Intentionally deleted.

§ 7.3.9 Intentionally deleted.

§ 7.3.10 Intentionally deleted.

§ 7.4 MINOR CHANGES IN THE WORK

Intentionally deleted.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. The Contractor shall anticipate a delay of up to sixty (60) days from any notice to proceed for plan review by the applicable jurisdictions. No extension of the Contract Time will be allowed for this period. The Contractor shall pay for all building construction permits, including partial permit fees if required.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner, or of an employee of Owner, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; (but not including weather or the results of weather, per Section 15.1.5.2 below); or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine, subject to any approval required under the Development Agreement.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Upon completion of the Work (or sooner if required under the Addendum or the Development Agreement), the Contractor shall submit to the Architect one (and not more than one) itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for the completed Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Intentionally deleted.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Intentionally deleted

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the

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Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 There will be no progress payments. The Contract Sum will only be paid when the Work is completed in accordance with the Infrastructure Improvements Plans.

§ 9.6.2 Intentionally deleted.

§ 9.6.3 Intentionally deleted.

§ 9.6.4 Immediately, upon receipt of the final payment as provided in Article 9 of these General Conditions, the Contractor shall provide Owner with a written statement, under oath, certifying that the Contractor has properly and fully paid Subcontractors and material and equipment suppliers the sums due and owing the Subcontractors as evidenced by the Application for Payment, together with a lien waiver from Contractor and all such Subcontractors. If the Contractor fails to furnish such evidence, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. Contractor shall not be entitled to receive any further payments pursuant to the Contract unless and until Contractor is in compliance with the terms of this Section.

§ 9.6.5 Intentionally deleted.

§ 9.6.6 A Certificate for Payment or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution (subject to Contractor's compliance with the provisions of the Contract), then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, including the issuance of a full certificate of occupancy, and the City has accepted the same as completed under the Development Agreement.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents and the Infrastructure Improvements Plans.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not

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included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Final Completion of the Work.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are

made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 Intentionally deleted.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or material supplier shall constitute a waiver by such payee of all Claims of which such payee has actual or constructive knowledge, including any Claims previously made and those not timely made under Article 15 below.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

| **§ 10.3.2** Intentionally deleted.

| **§ 10.3.3** Intentionally deleted.

| **§ 10.3.4** Intentionally deleted.

| **§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1.

| **§ 10.3.6** Intentionally deleted.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

| **§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. (See Addendum and Development

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Agreement.) Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the City, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the City and the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance, if any.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the City, the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 Intentionally deleted.

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

Intentionally deleted..

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 Intentionally deleted

§ 11.3.6 Before an exposure to loss may occur, the Owner and Contractor shall file with each other a copy of each policy that includes insurance coverages required by either of them under this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their members, officers, subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 Intentionally deleted.

§ 11.3.9 Intentionally deleted.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 Intentionally deleted.

§ 11.4.2 Intentionally deleted.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs

and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER FINAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER FINAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 Intentionally deleted.

§ 12.2.2.3 Intentionally deleted.

§ 12.2.2.4 All manufacturer's warranties required by the Contract Documents shall commence on the date of Final Completion of the Work or designated portions thereof. The Contractor shall be required to secure any extended warranties or special riders to standard warranties that are required to comply with these requirements.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

Init.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 Intentionally deleted.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Contractor's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from ten days after the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period allowed by applicable law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

§ 14.1.2 Intentionally deleted.

§ 14.1.3 Intentionally deleted.

§ 14.1.4 Intentionally deleted.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract and/or Contractor's right to perform or complete the Work if:

- .1 Contractor refuses or fails to supply enough properly skilled workers or proper materials;
- .2 Contractor fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 Contractor disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 Contractor otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 Contractor, Bliss Sports, LC, or an affiliate of Contractor, Bliss Sports, LC, or a member or manager of either of them either has been declared in default of the Development Agreement or the Recreation Center Construction Contract (as defined in the Development Agreement) and such default has not been cured within any applicable cure period provided for in such agreement or has terminated performance under the Development Agreement or the Recreation Center Construction; or
- .6 City has breached the obligation to pay the Infrastructure Payment or to act reasonably and timely in certifying the completion of the Work under the Development Agreement and Contractor has been offered, but after thirty (30) days has declined to accept, a written offer by Owner to make an assignment of Owner's right to enforce the City's obligations in full satisfaction of Owner's obligations to Contractor under this Contract.

Notwithstanding anything to the contrary in this Section 14.2.1, Owner may only terminate the Contract solely by virtue of a curable default by Contractor under either or both of 14.2.1.1 or 14.2.1.3 if the Contractor fails to cure a default under 14.2.1.1 and 14.2.1.3 within five (5) business days after notice from Owner to Contractor of such default; provided that Owner can terminate the Contract solely by virtue of a default by Contractor under either 14.2.1.1 or 14.2.1.3 without giving the Contractor an opportunity to cure if either the default is not curable or the Owner has previously given the Contractor two such notices and opportunities to cure.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate the Contract or, with or without terminating the Contract, terminate Contractor's right to perform or complete the Work and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract and/or Contractor's right to perform or complete the Work for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor when the Work is completed and accepted by Owner and the City. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract and/or Contractor's right to perform or complete the Work; provided, that such payment shall not exceed the value of the Work actually completed and material supplied as of the date of termination, and the Contractor shall not be entitled to anticipated profits or anticipated overhead upon the whole Contract or for other direct, indirect, or consequential damages arising out of or resulting from the Owner's termination.

§ 14.2.5 If after notice of termination pursuant to this Section 14.2 it is determined that the Contractor had not defaulted, the termination shall be deemed to have been effected for the convenience of Owner, and the Contractor shall be paid in accordance with Section 14.4 below.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Time shall be adjusted for increases in the time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 Intentionally deleted.

§ 14.4.1.1 Intentionally deleted.

§ 14.4.2
(Paragraphs deleted)
Intentionally deleted.

§ 14.4.3 Intentionally deleted.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract; provided, that a Claim shall not include the exercise by Owner or Contractor of any right or remedy otherwise granted to it in the Contract Documents,

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including but not limited to their respective rights under Article 14 above. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

Contractor may not make a Claim for an increase in the Contract Sum.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The average number of calendar days, including weekends and holidays, during which adverse weather should be anticipated for the general locale of this project are listed below for each month for the year.

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
16	11	6	7	7	8	7	5	6	5	3	9.

§ 15.1.5.2.3 The Contractor shall include provision in its bids and construction schedules for no less than the above number of calendar days per month during which adverse weather might potentially delay its Work. Contractor shall also: keep detailed onsite logs to substantiate the actual weather conditions and site conditions, including temperature, precipitation, snow or ice cover, wind and similar environmental data; and document the number of personnel onsite, their activities and time periods for those activities, and the specific days and times when adverse weather prevented Work from occurring, and why or how it prevented work from occurring.

§ 15.1.5.4 To be eligible for a time extension to the Contract due to adverse weather, the Contractor must have been prevented from working for fifty percent (50%) of more of the Contractor's scheduled Work effort for that day, and the Work delayed must be on the critical path of the Contractor's Construction Schedule.

§ 15.1.5.5 Requests for time extensions and the Work of separate Contractors will be considered independently, since a delay to one may or may not affect the others. A time extension to one separate Contractor does not imply that a similar time extension will also be granted to the other separate Contractors, although requests will be considered from a Contractor not directly delayed by adverse weather who can substantiate that the delayed Work of another Contractor will affect the timely completion of the Work.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Owner will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to litigation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Time. The initial decision shall be final and binding on the parties but subject to mediation (if the parties so select) and to litigation.

§ 15.2.6 Intentionally deleted.

§ 15.2.6.1 Intentionally deleted.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Intentionally deleted.

§ 15.3.2 The parties may endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 Intentionally deleted.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

OWNER:

RCP, LLC

By:
Name:
Title:


RCP, LLC,
a Kansas limited liability company

CONTRACTOR:

BLISS SPORTS II, LC

By:
Name:
Title:

By: The Kansas University Endowment
Association, a Kansas non profit
corporation, its sole member

By: 
Dale Seufferling, President

Init.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 Intentionally deleted.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

OWNER:

RCP, LLC

By:

Name:

Title:

CONTRACTOR:

BLISS SPORTS II, LC

By:

Name:

Title:



Int.

AIA Document A103™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work plus a fee without a Guaranteed Maximum Price

AGREEMENT made as of the _____ day of _____ in the year 2013
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

RCP, LLC
Attn. Monte Soukup
1891 Constant Avenue
Lawrence, KS 66047-3743

and the Contractor:
(Name, legal status, address and other information)

Bliss Sports II, LLC
209 Fallcreek Road
Lawrence, KS 66049

for the following Project:
(Name, location and detailed description)

Develop and manage construction of the Infrastructure Improvements, including the following: (i) on approximately twenty-one (21) acres of the Infrastructure Site, construct approximately eight hundred (800) paved parking spaces and drives, and eight (8) lighted tennis courts, adjacent to the Recreation Center, and all landscaping and irrigation, (ii) on portions of the Stadium Site, approximately seven hundred (700) paved parking spaces and drives and approximately five (5) linear miles of walking trails (portions of which will be located on the Property and adjacent property currently owned by the City), (iii) on portions of both the Infrastructure Site and the Stadium Site, all necessary sanitary sewer, potable water, storm sewer, water detention facilities, public and private streets, sidewalks and related improvements, and (iv) making the Pad Site in Pad-Ready Condition, all in accordance with the Infrastructure Improvements Plans.

Capitalized terms used above are as defined in that certain Rock Chalk Park Development Agreement ("Development Agreement") by and among the City of Lawrence, Kansas ("City"), Owner (as RCP), Bliss Sports, LC, and Contractor (as Bliss Sports II). The Project is further defined in Exhibit F and Exhibit G to the Development Agreement.

The Architect:
(Name, legal status, address and other information)

Gould Evans and Paul Werner

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

The Owner and Contractor agree as follows.

Init.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, the Development Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement, or if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be set forth in a Notice to Proceed. Notice to proceed will be issued after receipt of all bonds and insurance. Contractor to provide all such bonds and insurance on and effective as of the date of this Agreement.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

N/A

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work as follows:

(Insert the number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

In accordance with the Completion Dates and Project Timeline established in the Development Agreement.

Portion of Work

Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

N/A

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the actual Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee subject to Section 3 of the Addendum:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

two and one-half percent (2.5%) of the Cost of the Work.

§ 5.1.2 Intentionally omitted.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Notwithstanding the foregoing, and the below-described Control Estimate, in no event shall the Contract Sum exceed the Infrastructure Payment.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed zero percent (0.0 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item
N/A

Units and Limitations

Price Per Unit (\$0.00)

§ 5.2 CONTROL ESTIMATE

§ 5.2.1 The Contractor shall prepare and submit to the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Contractor shall update the Control Estimate with each Application for Payment as needed to reflect changes in the Work.

§ 5.2.2 The Control Estimate shall include

- .1 the documents enumerated in Article 16, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Contractor in the preparation of the Control Estimate, including assumptions under Section 5.2.4, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee (which the parties agree is attached as Exhibit I to the Development Agreement);
- .4 a project schedule indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment requiring long-lead time, and the Owner's occupancy requirements showing portions of the Project having occupancy priority; and
- .5 contingencies for further development of design and construction as required by Section 5.2.4.

§ 5.2.3 The Contractor shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 5.2.4 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 5.2.5 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Contractor shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Contractor shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 6.2 Increased costs for the items set forth in Article 7 which result from changes in the Work shall become part of the Cost of the Work, and the Contractor's Fee shall be adjusted as provided in Article 5.

§ 6.3 If the Contractor receives any drawings, specifications, interpretations or instructions from the Owner which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work or estimated date of Substantial Completion in comparison with the Control Estimate, the Contractor shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Contractor receives further written instructions from the Owner and Architect.

Init.

§ 6.4 Intentionally deleted.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth on attached Fee Schedule and the following items:

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15 the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Intentionally deleted.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Intentionally deleted.

§ 7.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs including transportation and storage at the site of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of a comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

Init.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

| § 7.5.4 Intentionally deleted.

§ 7.5.5 Costs of materials and equipment stored off-site at a mutually acceptable location, with the Owner's prior approval.

§ 7.6 MISCELLANEOUS COSTS

| § 7.6.1 Intentionally deleted.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. Such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee, however. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, they shall not be included in the Cost of the Work.

| § 7.6.6 Intentionally deleted.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

| § 7.6.8 Legal and other professional services fees and costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, or City and Contractor, reasonably incurred by the Contractor and as permitted under the Development Agreement and with the Owner's prior approval, which shall not be unreasonably withheld.

| § 7.6.9 Intentionally deleted.

| § 7.6.10 Intentionally deleted.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 RELATED PARTY TRANSACTIONS

| § 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder, member, or

Init.

management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction directly or indirectly between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include any items specified as not reimbursable on the attached Fee Schedule or listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7; and
- .7 Any other cost not listed in, or which is listed as not reimbursable under, the attached Fee Schedule.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Contractor shall then determine, with the advice of the Owner and Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. The Contractor shall provide in any Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders,

vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

Intentionally deleted.

(Paragraphs deleted)

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work, as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment in accordance with the requirements of the Development Agreement;
- .3 a final Certificate for Payment has been issued by the Architect; and
- .4 the Owner and City have accepted the Work in accordance with the Development Agreement.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of AIA Document A201-2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment, subject to Section 12.2.4 below.

§ 12.2.4 The Owner's final payment to the Contractor shall be made after the issuance of the Architect's final Certificate for Payment:

and within seven (7) days of receipt by Owner of the Infrastructure Payment (as defined in the Development Agreement) from City.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Owner will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

Init.

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2

(Paragraphs deleted)
Intentionally deleted.

§ 14.3 Intentionally deleted.

§ 14.4 Intentionally deleted.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2

(Paragraphs deleted)
Intentionally deleted.

§ 15.3 The Owner's representative:
(Name, address and other information)

Monte Soukup
1891 Constant Avenue
Lawrence, KS 66047-3743

§ 15.4 The Contractor's representative:
(Name, address and other information)

Thomas Fritzel
209 Fallcreek Road
Lawrence, KS 66049

Init.

§ 15.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 15.6 Other provisions:

N/A

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A103-2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by Owner and attached hereto.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A			

§ 16.1.4 The Specifications:
(Either list here or refer to an exhibit attached to this Agreement)

See Exhibit G to Development Agreement

Section	Title	Date	Pages
N/A			

§ 16.1.5 The Drawings:
(Either list here or refer to an exhibit attached to this Agreement)

See Exhibit G to Development Agreement

Number	Title	Date
N/A		

§ 16.1.6 The Addenda, if any:

Number	Date	Pages
N/A		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

- 1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

N/A

- 2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents)

Init.

unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

(a) Addendum to Standard Form of Agreement Between Owner and Contractor.

(b) The above-referenced Development Agreement, as the same may be amended.

(c) Fee, General Conditions and Reimbursable Expenses Matrix (Fee Schedule).

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of A201-2007.)

Type of Insurance or bond
See General Conditions

Limit of liability or bond amount (\$0.00)
See General Conditions

This Agreement entered into as of the day and year first written above.

OWNER

CONTRACTOR

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

RCP, LLC,
a Kansas limited liability company

By: The Kansas University Endowment
Association, a Kansas non profit
corporation, its sole member

By: 
Dale Seufferling, President

Init.

unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

- (a) Addendum to Standard Form of Agreement Between Owner and Contractor.
- (b) The above-referenced Development Agreement, as the same may be amended.
- (c) Fee, General Conditions and Reimbursable Expenses Matrix (Fee Schedule).

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of A201-2007.)

Type of insurance or bond
See General Conditions

Limit of liability or bond amount (\$0.00)
See General Conditions

This Agreement entered into as of the day and year first written above.

OWNER

CONTRACTOR

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

Init.

FEE SCHEDULE
(Section 8.1 of AIA Document A-103-2007)

Exclusions from Cost of the Work

1. Items specifically listed as being (a) not reimbursable under, or (b)(i) excluded from, or (ii) not includable in, the Cost of Work in, the Development Agreement or elsewhere in the Infrastructure Improvements Construction Contract, including without limitation in Article 8 of AIA Document A-103-2007.
2. Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road.
3. Bonuses, profit sharing, incentive compensation and any discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor.
4. Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
5. Payment and performance bonds except to the extent required by Owner under Section 12 of the Addendum to Standard Form of Agreement between Owner and Contractor. Self-insurance for any of the coverages required by the Contract Documents.
6. Costs for electronic equipment and software.
7. Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel, whether or not required for the Work.
8. Expenses of the Contractor's supervisory or administrative personnel incurred while traveling, whether or not in discharge of duties connected with the Work.
9. Any items of cost that the City of Lawrence does not pay to Owner or which, when combined with the construction management fee, are in excess of the amount paid to Owner by the City of Lawrence.
10. Profit, overhead, fees or other soft costs to Contractor or any subcontractor performing portions of the Work which subcontractor is a "related party" to Contractor. Such amounts are instead to be compensated, if at all, from the construction management fee of 2.5% of the other Cost of Work and are not reimbursable to Contractor or any related party subcontractor to the extent they collectively exceed such construction management fee.

Inclusions in Cost of the Work

Subject to the Exclusions from Cost of the Work above, the items of out of pocket costs and payments described as constituting valid elements of the Infrastructure Improvements Cost in Section 11.02 of the Development Agreement; provided that pursuant to Section 11.01 of the

Development Agreement the Contractor's Fee provided for in Section 5.1.1 of the AIA Document A103-2007 constituting part of the Agreement will not be paid on the following items of soft costs as shown on Exhibit I of the Development Agreement: Legal Fees per Development Agreement, Loan origination fees for project financing and loan interest for project financing.

**ADDENDUM TO STANDARD FORM OF
AGREEMENT BETWEEN OWNER AND CONTRACTOR**

AIA DOCUMENTS A103-2007 AND A201-2007, AS MODIFIED

THIS ADDENDUM (the "Addendum") is made as of _____, 2013, by and between RCP, LLC, a Kansas limited liability company ("Owner") and BLISS SPORTS II, LC, , a Kansas limited liability company ("Contractor") FOR AND IN CONSIDERATION of the mutual promises and covenants made herein and those made in a certain "Standard Form of Agreement Between Owner and Contractor, AIA Document A103-2007" of even date herewith (together with the General Conditions and the Contract Documents as defined therein, and, as modified by this Addendum, the "Agreement"). The parties hereto agree as follows:

1. Incorporation. This Addendum is hereby incorporated by reference into the Agreement. This Addendum shall modify and supersede any terms, conditions and provisions of the Agreement to the extent that the terms, conditions and provisions in this Addendum are contrary to, or inconsistent with, the terms, conditions and provisions of the Agreement.

2. Work Includes Obligations under Development Agreement. Owner and Contractor acknowledge that they are parties to that certain "Rock Chalk Park Development Agreement" dated _____, 2013, by and among Owner, Contractor, the City of Lawrence, Kansas ("City") and Bliss Sports, LC, a limited liability company ("Bliss Sports") (the "Development Agreement"). Owner and Contractor acknowledge that the Agreement is intended to be the Infrastructure Improvements Construction Contract as that term is defined in Section 7.01 of the Development Agreement. Notwithstanding anything to the contrary in the Agreement or in the Development Agreement, as part of the Work (as defined in the Agreement) Contractor agrees to perform and provide (for the benefit of Owner and City) all obligations that Owner has under the Development Agreement for the benefit of City, including, without limitation, the following:

(a) Engagement of Architect. Contractor has engaged the Architect (as defined in the Development Agreement) to prepare the Infrastructure Improvements Plans in accordance with Article VI of the Development Agreement (the "Architect's Infrastructure Work"). Owner shall not be responsible for any act or neglect of Architect. Contractor shall cause Architect to comply with Architect's obligations under the Agreement and the Development Agreement.

(b) Pad Site Work. Contractor certifies that, directly or using contractors, subcontractors and materialmen permitted under the Agreement, Contractor has completed the work necessary to make the Pad Site (as defined in the Development Agreement) into Pad Ready Condition (as defined in the Development Agreement) in accordance with Sections 5.01, 8.02 and 8.03 and Article VII of the Development Agreement and the Project Timeline provided for in Sections 4.04 and 8.03(c) of the Development Agreement (collectively together with the other work referred to in this subparagraph, the "Pad Site Work"). As part of the Pad Site Work, Contractor has prepared and issued to the City the form of certificate provided for in Section 8.02 of the Development Agreement, certifying that the Pad Site is in Pad Ready Condition, which certification has been accepted by the City. In addition, Contractor agrees to (i) prepare and deliver to the City, with a copy to RCP, on a timely basis, the accounting of the costs incurred by Contractor to do the Pad Site Work and an estimate of the costs incurred or anticipated to be incurred relating to the balance of the Infrastructure Improvements in accordance with Sections 3.04 and 11.02 of the Development Agreement; (ii) hold and provide the City and Owner access to the team meetings provided for in Section 9.01 of the Development Agreement; (iii) deliver when due all reports required to be made to the City and Owner in accordance with Section 9.03 of the Development Agreement and other provisions of the Agreement; and (iv) carry, in accordance with Article XIII of the Development Agreement, the insurance specified in such article and any other insurance required to be carried under this Agreement.

(c) Other Infrastructure Improvements Work. Contractor, directly or using contractors, subcontractors and materialmen permitted under the Agreement, will perform the work necessary to develop and construct the rest of the Infrastructure Improvements (i.e., those improvements included in the term Infrastructure Improvements other than the making of the Pad Site into Pad Ready Condition) in accordance with the Development Agreement, including, without limitation, Article VII and Section 8.03 thereof (collectively together with the other work referred to in this subparagraph, the "Other Infrastructure Work"). As part of the Other Infrastructure Work, Contractor agrees to: (i) prepare and issue to the City the form of certificate provided for in Section 10.01 of the Development Agreement promptly after Substantial Completion of the Infrastructure Improvements; (ii) prepare and deliver to the City, with a copy to RCP, on a timely basis the accounting of the costs incurred by Contractor to do all of the Infrastructure Improvements (including, without limitation, any included in the Pad Site Work) in accordance with Section 11.02 of the Development Agreement; (iii) hold and provide the City and Owner access to the team meetings provided for in Section 9.01 of the Development Agreement; (iv) provide the City access to the locations where Infrastructure Improvements are being constructed in accordance with Section 9.02 of the Development Agreement; (v) deliver when due all reports required to be made to the City and Owner in accordance with Section 9.03 of the Development Agreement and other provisions of the Agreement; (vi) carry, in accordance with Article XIII of the Development Agreement, the insurance specified in such article and any other insurance required to be carried under this Agreement; and (vii) perform any work necessary to correct any deficiencies in the Infrastructure Improvements which may be determined to exist in accordance with Sections 8.04 and 10.01 and Article XIV of the Development Agreement.

(d) [INTENTIONALLY DELETED]

3. Amount and Payment of Contract Sum.

(a) Notwithstanding anything to the contrary in the Agreement, and in any event subject to Subsection 3(c) of this Addendum, Owner shall not be obligated to pay to Contractor (or any of its contractors, subcontractors or materialmen) any amount for providing work or materials as part of the Work (i.e., the Contract Sum) except for the amounts payable to Owner from the City pursuant to the provisions of the Development Agreement, if any, and the King Bond Premium, if any, in accordance with Section 12 hereof.

(b) [INTENTIONALLY DELETED]

(c) If the Infrastructure Improvements Completion Date (as defined in Section 10.01 of the Development Agreement and used herein) occurs prior to the termination of this Agreement, the Owner will pay to Contractor, within three (3) business days after Owner's receipt thereof, the amount payable to Owner as the Infrastructure Payment under Section 11.01 of the Development Agreement (which amount the parties acknowledge could be zero), in full satisfaction of all compensation due to Contractor (and its contractors, subcontractors, materialmen and the Architect) in performing under this Agreement, including the Architect's Infrastructure Work, the Pad Site Work, the Other Infrastructure Work and anything else included in the term Work under the Agreement; provided that Owner need not pay such amount to Contractor until (i) The Work (including, without limitation, the Architect's Infrastructure Work, the Pad Site Work and the Other Infrastructure Work) has been fully and properly completed, (ii) Contractor has delivered to Owner all certificates and applications for payment provided for in the Agreement and (iii) Contractor has delivered to Owner waivers of mechanics, materialmen and any other liens, including, without limitation, claims for liens against any bond that the City may require be posted by Contractor or Owner, whether under KSA 60-1111 or otherwise, that Contractor and any of its contractors, subcontractors, materialmen and the Architect might otherwise be entitled to claim under applicable law with respect to any of such Work. Notwithstanding anything to the contrary in the preceding sentence, if the "Recreation Center Architect's Fees" payable by the City under Section 3.01 of the Development Agreement are paid to RCP in addition to the Infrastructure Payment (as defined in

the Development Agreement), then RCP will either pay those directly to the Architect or, upon presentation to RCP of documentation reasonably satisfactory to RCP that Contractor has paid all or a portion of such fees, RCP will reimburse Contractor from any such "Recreation Center Architect's Fees" actually received to the extent so paid by Contractor; which payment to Contractor shall be in addition to the Infrastructure Payment if not otherwise included therein.

(d) In no event will the Contract Sum payable by Owner exceed the sum of (i) all of the hard costs and soft out of pocket costs incurred by Contractor in connection with development and construction of the Infrastructure Improvements that are completed as part of the Work (including, without limitation, the cost of obtaining the bond required by KSA 60-1111); and (ii) a construction management fee of Two and 50/100ths percent (2.5%) of the amount described in (i) (less those items on which such construction management fee is not to be paid pursuant to Section 11.01 of the Development Agreement or the fee schedule referred to in Section 8.1 of the AIA Document A-103-2007 which constitutes a portion of the Agreement; provided, that to the extent any portion of the Infrastructure Improvements Cost (as defined in the Development Agreement and as established under the Agreement) consists of profit, overhead, fees, or other soft costs to Contractor or any subcontractor performing work on the Infrastructure Improvements, which subcontractor is a "related party" to Contractor (as defined in the Agreement), whether through common ownership interests, management, family relationships, or otherwise, such costs shall be credited against the construction management fee payable to Contractor under (ii) above and, if they exceed the construction management fee otherwise payable to Contractor shall reduce the Contract Sum otherwise payable to Contractor.

4. [INTENTIONALLY DELETED]

5. Proration of Contract Sum/Infrastructure Improvements Cost. To the extent that the costs and fees making up the total Contract Sum/Infrastructure Improvements Cost (and the separate elements thereof) pertain to work performed with respect to the Recreation Center Site (as defined in the Development Agreement), the Infrastructure Site, the Stadium Site (as defined in the Development Agreement), and other portions of the Property (as defined in the Development Agreement), and upon which the Infrastructure Improvements (as defined in the Development Agreement) or any portions thereof are located or constructed, such costs and fees will be allocated on a percentage basis based on the percentage of the Work of the Infrastructure Improvements constructed on each of the Recreation Center Site, the Infrastructure Site, the Stadium Site, and any other portion of the Property. Contractor will reasonably cooperate with Owner and City in allocating such costs and fees so as qualify for and satisfy any applicable industrial revenue bond financing requirements that Owner or City may make.

6. Modifications to Section 1.5 of General Conditions. Upon payment in full to Contractor for all services rendered under this Agreement, Owner shall have title to, own, and have the right to use for its purposes, without additional compensation to Contractor or Architect, all Plans, Drawings and Specifications (at whatever stage of development) furnished to Owner by Architect. In the event this Agreement is terminated, for whatever reason, Owner shall have the right, but not the obligation, to purchase the Plans, Drawings, and Specifications, or selected portions thereof, upon payment to Contractor of the Architect's fees attributable to such selected Plans, Drawings, and Specifications. Contractor shall provide for all of the foregoing in its separate contracts or agreements with Architect. Owner agrees that it will not sell, license or (except on its own projects) otherwise permit the use of such Plans, Drawings and Specifications or any prints made thereof. Architect and Contractor shall have no responsibility to Owner incident to Owner's use of such Plans, Drawings and Specifications.

7. Modifications to Article 11 of General Conditions.

(a) The policies of insurance and payment/performance bonds to be provided by Contractor shall be in such forms as may be the most extensive, and in such amounts as may be highest, among those listed in this Addendum, the General Conditions and the Development Agreement, respectively.

(b) In addition to insurance coverages specified in the Development Agreement and the General Conditions, Contractor will carry or cause third parties at no cost to Owner or City to carry business auto liability insurance with limits of at least \$1,000,000 each accident which includes coverage for liability arising out of all owned, leased, hired and non-owned automobiles of Contractor and its subcontractors and which includes the Owner and the City as primary and non-contributory additional insureds.

(c) In addition to insurance coverages specified in the Development Agreement and the General Conditions, Contractor will cause the Architect and, if the Contractor is responsible for any design element of the Work, then Contractors Professional Liability Insurance with insurance companies satisfactory to the Owner, including contractual liability insurance against the liability assumed in this Agreement which shall have limits of at least \$1,000,000 per claim and contain prior acts coverage sufficient to cover all acts performed by the Contractor and the Architect in connection with the Work.

(d) In all instances where the Agreement or the Development Agreement require that the City or the Owner be named as additional insureds, the coverage for such additional insureds shall apply as primary before any other insurance or self-insurance of such additional insureds, including any deductible maintained by, or provided to such additional insured.

(e) Contractor will carry completed operations insurance for a minimum of two (2) years following Final Completion of the Work.

(f) Contractor will require all subcontractors engaged in the Work to carry the same insurance coverages as Contractor is required to carry in connection with the Work.

(g) Contractor shall name the City as an additional insured on all policies of insurance maintained by Contractor and under which Owner is also a named insured, and all payment and performance bonds provided by Contractor shall also run to the benefit of City.

(h) If Contractor fails to maintain or cause to be maintained the insurance coverage required hereunder, then Contractor acknowledges that either City or Owner may, but shall not be obligated to, contract for the required policies of insurance and pay the premiums on the same and Contractor agrees to reimburse whichever of the City or the Owner that obtains such insurance coverages for the amounts so advanced with interest thereon at 7% per annum.

8. Meetings and Reports. In connection with Contractor's provision of services and performance of Work under the Contract Documents, and in addition to any meetings under the Contract Documents, Contractor shall meet not less often than every other week with Owner and City at such reasonable times and places chosen by the Owner, to discuss the results and progress of the Work on the Project and/or of any services or Work then being performed by Contractor, and to discuss and address any problems relating thereto. If requested or required by Owner, Contractor shall provide Owner with written reports or recommendations in connection with such meetings. At any such meetings, Owner shall have the option, upon reasonable notice, to require the attendance of any Subcontractor to Contractor.

9. Indemnification and Release. Contractor agrees to indemnify, defend, and hold Owner, its directors, officers, employees, agents, and independent contractors and consultants (the "Owner Indemnified Parties") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (i) the development and construction of the Infrastructure Improvements and the Project or the Work, or (ii) the gross negligence or willful misconduct of Contractor, its members, employees, agents or independent contractors in connection with the development and construction of the Infrastructure Improvements or the Work of the Project.

10. Contractor's Financing. If Contractor obtains financing from any third party for the performance of any portion or all of the Work, whether in the form of industrial revenue bond financing, third party lender

financing used to purchase any of such bonds, other financing or a combination thereof, Contractor shall not enter into any documents evidencing such financing except with the prior written consent of Owner which Owner reserves the right to condition upon (a) the execution of an agreement between Owner and such lender(s) in a form reasonably acceptable to Owner, and (b) compliance with the provisions of this Agreement and the Development Agreement, including, without limitation, Section 13.03 of the Development Agreement.

11. Guaranty of Payment and Performance by Contractor. Contemporaneously with the execution of this Addendum and the rest of the documents constituting the Agreement, Contractor shall cause Thomas S. Fritzel and Dru Stewart Fritzel to guarantee, the payment and performance of all of Contractor's obligations thereunder in the form attached to this form of Addendum as Exhibit One.

12. Payment and Performance Bond and Lien Waivers by Certain Subcontractors.

(a) If the City requires that a bond be posted for the performance of the Work, whether pursuant to KSA 60-1111 or otherwise, Contractor shall obtain and furnish to the City a bond which satisfies any such requirement, whether such requirement applies to Owner or Contractor, at no cost to Owner other than the payment of the Infrastructure Payment when and to the extent due under Section 3(c) hereof.

(b) Within ten (10) business days of the execution of the Agreement Contractor will enter into and deliver to Owner a copy of a written contract between Contractor and King Construction whereby King Construction agrees to perform certain portions of the Infrastructure Improvements, including substantially all grading related thereto (the "King Contract"). The King Contract will provide that, upon written request of Owner, King Construction will obtain and furnish to Owner a payment and performance bond issued to guarantee payment and performance by King Construction of all of such subcontractor's obligations under the King Contract in an amount of no less than the amount to be paid to King Construction upon full performance under the King Contract issued by a generally recognized bonding company licensed in Kansas and naming Owner as well as Contractor as beneficiaries of such bond (the "King Bond"). The King Contract will specify the premium that would be charged for the King Bond if requested by Owner (the "King Bond Premium") and, notwithstanding anything to the contrary in the Agreement, if Owner requests that King Construction obtain and deliver the King Bond, then Owner will pay the King Bond Premium directly to the issuer of the King Bond and will not offset the amount thereof against the Contract Sum otherwise payable to Contractor hereunder. Contemporaneously with delivery of the King Contract, Contractor will notify Owner what other contractors, other than King Construction and Contractor, are performing more than twenty-five percent (25%) of the Work other than the delivery of material and, if there are any, then Contractor shall furnish Owner with a copy of all contracts with such other contractors and, upon request by Owner, each such subcontractor will also deliver a quote for the premium that would be required for such subcontractor to obtain and furnish for the benefit of Owner and Contractor a payment and performance bond for such subcontractor's portion of the Work and, upon Owner's written request, such subcontractor will furnish such bond to Owner and Owner will be responsible for the payment of the premium thereof in the same manner as for the King Bond Premium. Without limiting any other reporting obligations Contractor may have, no less often than monthly Contractor will furnish Owner with copies of receipts and lien waivers from materialmen and other subcontractors performing portions of the Work. Contractor represents to Owner that Contractor will pay King Construction and any other subcontractor from which a quote for a premium to obtain a payment and performance bond is required to be furnished to Owner under this subsection for work theretofore performed satisfactorily no less often than monthly.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date first set forth above.

OWNER:

RCP, LLC, a Kansas limited liability company

By: The Kansas University Endowment Association, a
Kansas not for profit corporation, its sole member

By: 

Dale Seufferling, President

CONTRACTOR:

BLISS SPORTS II, LC,
a Kansas limited liability company

By: _____

Thomas S. Fritzel, Manager

and

By: _____

Dru Stewart Fritzel, Member

OWNER:

RCP, LLC, a Kansas limited liability company

By: The Kansas University Endowment Association, a
Kansas not for profit corporation, its sole member

By: _____
Dale Seufferling, President

CONTRACTOR:

BLISS SPORTS II, LC,
a Kansas limited liability company

By: _____
Thomas S. Fritzel, Manager

and

By: _____
Dru Stewart Fritzel, Member

EXHIBIT ONE

GUARANTY OF PAYMENT AND PERFORMANCE

In order to induce RCP, LLC, a Kansas limited liability company ("Owner") to enter into the "Standard Form of Agreement Between Owner and Contractor, AIA Document A103-2007" of even date herewith (together with the General Conditions and the Contract Documents as defined therein, and, as modified by this Addendum, the "Agreement") with BLISS SPORTS II, LC, , a Kansas limited liability company ("Contractor"), he undersigned (collectively, the "Guarantor") hereby execute this document (the "Guaranty") in order to guarantee for the benefit of Owner the payment and performance when due of all of the obligations and indebtedness of the Contractor under the Agreement (the "Obligations").

The persons listed as the Guarantor acknowledge that they are jointly and severally liable for the payment and performance when due of all of the Obligations. This Guaranty is a guaranty of payment and not of collection, and Owner shall not be required to take any action against Contractor as a precondition to the obligations of the Guarantor hereunder.

Guarantor agrees that Guarantor's liability hereunder will not be released, reduced, impaired or affected by any one or more of the following events: (a) Owner obtaining collateral or a bond from Contractor or any other person to secure payment or performance of the Obligations of Contractor under the Agreement; (b) the assumption of liability by any other person (whether as guarantor or otherwise) for payment or performance of the Obligations under the Agreement; (c) the release, surrender, exchange, loss, termination, waiver or other discharge of any collateral or bond securing payment or performance of the Obligations under the Agreement; (d) the subordination, relinquishment or discharge of the Owner's rights relating to the Obligations, Agreement or any collateral or bond therefor; (e) the foreclosure upon any collateral or bond given to secure any of the Obligations by judicial or non-judicial sale; (f) the loss or impairment of any right of subrogation of the Guarantor; (g) the full or partial release from liability of Contractor or any other person now or hereafter liable for payment or performance of any of the Obligations under the Agreement; (h) the insolvency, bankruptcy, reorganization, discharge, waiver or other exoneration of the Contractor or any other person now or hereafter liable for payment or performance of any of the Obligations under the Agreement; (i) the renewal, consolidation, extension, modification, rearrangement or amendment from time to time of the Agreement, including, without limitation, the extension of the due date of any of the Obligations; (j) the failure, delay, waiver or refusal by Owner to exercise any right or remedy held by Owner under the Agreement or applicable law; (k) Owner's application of any monies available to Owner in payment or reduction of any of the Obligations under the Agreement in such manner and such amounts and at such times and in such order of priority as Owner may see fit to the payment or reduction of such portions of the Obligations as Owner may elect; (l) the sale, encumbrance, transfer or other modification of the ownership of the Contractor; (m) the invalidity, unenforceability or insufficiency of the Obligations the Agreement or any collateral securing payment or performance thereunder; or (n) the failure of the Guarantor to receive notice of any one or more of the foregoing actions or events. Guarantor specifically acknowledges and agrees that Owner may, at its option without notice to or further consent of Guarantor, take any of the foregoing actions and that if Owner elects to take any of the foregoing actions or any of the foregoing events occur, that such actions or events shall in no way reduce, affect, impair or limit the liability of Guarantor hereunder.

Guarantor hereby expressly waives (a) diligence, presentment, protest, notice of dishonor, demand for payment, notice of nonpayment or nonperformance; (b) notice of the acceptance of this Guaranty; (c) notice of the existence or creation of all or any part of the Obligations; (d) notice of termination as to future liability given by any other guarantor; (e) notice of demand, advertisement or notice of time or place of sale of any collateral securing any of the Obligations; (f) all presentments, demands for performance, notices of nonperformance, protests and all other notices whatsoever; (g) any right to require Owner to proceed against Contractor or any security or bond held in relation to the Obligations or to pursue any other right or remedy in

Owner's power; (h) any right to contest the enforcement of this Guaranty by virtue of any statute of limitations or other law varying the terms of this Guaranty; (i) any other defense available to Guarantor at law or in equity; or (j) the rights to interpose counterclaims or set offs of any kind or description in any litigation arising under this Guaranty.

Guarantor acknowledges and agrees that Guarantor has performed his or its own independent investigation of the financial condition of Contractor and has not relied upon Owner for such investigation. Guarantor hereby waives and agrees not to assert or take advantage of any duty on the part of Owner to disclose to Guarantor any facts it may now or hereafter know about Contractor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Contractor and of all circumstances bearing on the risk of nonpayment of any indebtedness hereby guaranteed.

Guarantor hereby irrevocably subordinates, to the claims and rights against Contractor and its property and proceeds thereof which Owner and Owner's successors and assigns may now have or hereafter acquire, any claims or other rights which Guarantor may now have or hereafter acquire against Contractor that arise from the existence or performance of the Guarantor's obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy Owner has against the Contractor or any collateral which Owner now or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from the Contractor, directly or indirectly, in cash or other property or setoff or in any other manner, payment or security on account of such claim or other rights.

No provision or term of this Guaranty may be amended, modified, revoked, supplemented, waived or otherwise changed except by a written instrument duly executed by Guarantor and Owner and designated as an amendment, supplement or waiver.

Guarantor will not voluntarily or involuntarily transfer title to any of his material assets without fair consideration or take any other action or suffer the same to be done, which would have a materially adverse effect on Guarantor's ability to fulfill his obligations to Owner hereunder.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by Owner, all as though such payment had not been made.

Any notice required to be given to any party pursuant to any provision of this Guaranty shall be in writing and shall be delivered by hand delivery or mailed by certified mail, return receipt requested, postage prepaid. All notices or other communications shall be deemed to be properly given upon receipt of delivery by the applicable party. All notices or other communications shall be addressed as follows:

- (a) If to Guarantor, to:
Mr. and Mrs. Thomas Fritzel

- (b) If to Owner, to:
RCP, LLC
1891 Constant Avenue
Lawrence, KS 66047-3743

This Guaranty may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

This Guaranty will be binding on the Guarantor and its respective heirs, personal representatives, successors and assigns, and will inure to the benefit of the Owner and all successors and assigns of the Owner. Guarantor consents to the assignment of all or any portion of the rights of the Owner hereunder in connection with any assignment of the rights of the Owner under the Agreement without notice to the Guarantor.

Owner shall not be deemed to have waived any provision of this Guaranty or the Agreement unless such waiver is in writing and is signed by Owner.

The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Guaranty a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Guarantor hereby waives any right to jury trial of any claim, cross-claim or counterclaim relating to or arising out of or in connection with this Guaranty or the Agreement.

This Guaranty has been negotiated, executed and delivered in Kansas, and is intended to be construed in accordance with the laws of the State of Kansas.

Time is of the essence hereof with respect to the dates, terms and conditions of this Guaranty.

IN WITNESS WHEREOF, the persons constituting the Guarantor have duly executed this instrument as of _____, 2013.


Thomas S. Fritzel

and


Dru Stewart Fritzel

CONSENT TO RELATED PARTY SUBCONTRACTOR

THIS CONSENT TO RELATED PARTY SUBCONTRACTOR (the "Consent") is made as of August ____, 2013 by RCP, LLC, a Kansas limited liability company ("Owner") at the request of Bliss Sports II, LLC, a Kansas limited liability company ("Contractor").

WITNESSETH:

WHEREAS, Owner, Contractor and certain third parties are the parties to a certain Rock Chalk Park Development Agreement dated ____, 2013 (the "Development Agreement") which provides for the construction of certain improvements defined therein (and referred to herein) as the "Infrastructure Improvements;"

WHEREAS, Owner and Contractor have entered into the following documents which collectively constitute the "Infrastructure Improvements Construction Contract" (as that term is defined in the Development Agreement and referred to herein): (a) AIA Document A103-2007 Standard Form of Agreement between Owner and Contractor (the "AIA A-103 Form"); (b) A201-2007 General Conditions of the Contract for Construction (the "AIA A-201 Form"); and (c) Addendum to Standard Form of Agreement between Owner and Contractor (the "Addendum");

WHEREAS, Contractor desires to enter into a subcontract with DFC Company of Lawrence, L.C., a Kansas, limited liability company ("DFC") act as a subcontractor of Contractor in connection with the performance of the "Work" (as that term is defined in the Infrastructure Improvements Construction Contract and used herein) pursuant to that form of contract attached hereto as Exhibit A and any written amendments thereof which Owner may, in its reasonable discretion, approve from time to time in writing hereafter (the "DFC Subcontract") which describes the specific nature of the contemplated transaction and the anticipated cost to be incurred in connection with the performance of the Work;

WHEREAS, DFC is a "related party" as that term is defined in Section 7.8.1 of the AIA A-103 Form so that Contractor's consent to the use of DFC as a subcontractor for a portion of the Work is required under Section 7.8.2 of the AIA A-103 Form; and

WHEREAS, Contractor and DFC have requested that Owner give such a consent and Owner is willing to give such consent upon the terms and conditions set forth in this consent;

NOW, THEREFORE, for purposes of Section 7.8.2 of the AIA A-103 Form Owner consents to Contractor engaging DFC to perform the portion of the Work described in, for the compensation described in the DFC Subcontract attached hereto as Exhibit A on the following conditions:

1. By executing this Consent DFC agrees that:

(a) Owner can enforce the DFC Subcontract as a third party beneficiary thereof but that Owner has no liability to DFC under the DFC Subcontract and DFC will look solely to Contractor for any consideration payable to DFC under the DFC Subcontract;

(b) the amount payable to DFC under the DFC Subcontract (the "DFC Payment") is subject to the provisions of Section 3(d) of the Addendum so that if the profit, overhead, fees or other soft costs payable to Contractor under the Infrastructure Improvements Construction Contract, payable to DFC under the DFC Subcontract or payable to any other related party (as that term is defined in Section 7.8.1 of the AIA A-103 Form) under any other subcontract or sub-subcontract would exceed Two and 50/100ths percent (2.5%) of the other hard costs and soft out of pocket costs incurred by Contractor in connection with the development and construction of the Infrastructure Improvements completed as part of the Work, that the Contract Sum otherwise payable by Owner to Contractor and, at Owner's request, the DFC Payment will be reduced so that the total of the construction management fees, profit, overhead, fees and other soft costs will not exceed Two and 50/100ths percent (2.5%) the other hard costs and soft out of pocket costs incurred by Contractor and upon payment of the DFC Payment (as the same may be reduced per this provision) DFC will execute (and will obtain from all of its sub-subcontractors and materialmen) and deliver to Owner a waiver of all claims of mechanics or materialmen's liens or of claims against any KSA 60-1111 bond when the Contract Sum (as the same is defined in the Infrastructure Improvements Contract) is paid;

(c) at Owner's request DFC will provide Owner and Owner's designees including without limitation the City of Lawrence, with access to and copies of all of the types of information and documentation at the times that Contractor is required to provide the same under the Development Agreement or the Infrastructure Improvements Contract;

(d) DFC will not enter into any sub-subcontracts or other agreement with respect to the Work with Contractor or any third party that would constitute a related party (as that term is defined in Section 7.8.1 of the AIA A-103 Form), including without limitation a modification of the DFC Subcontract, without obtaining the prior written consent thereto of Owner; and

(e) DFC will be jointly and severally liable with Contractor to Owner for the performance of the portion of the Work which is provided to be done by DFC or its sub-subcontractors and materialmen under the terms of the DFC Subcontract.

2. By executing this Consent Contractor acknowledges and agrees that:

(a) nothing in this Consent relieves Contractor from liability to Owner for the performance of any of the Work under the Infrastructure Improvements Construction Contract; and

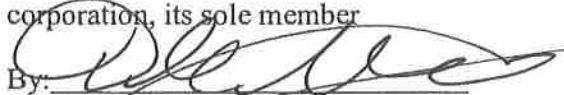
(b) except for the DFC Subcontract consented to herein, Contractor will not enter into any sub-subcontracts or other agreement with respect to the Work with DFC or any other third party that would constitute a related party (as that term is defined in Section 7.8.1 of the AIA A-103 Form), including without limitation a modification of the DFC Subcontract, without obtaining the prior written consent thereto of Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Consent as of the date first set forth above.

OWNER:

RCP, LLC, a Kansas limited liability company

By: The Kansas University Endowment Association, a Kansas not for profit corporation, its sole member

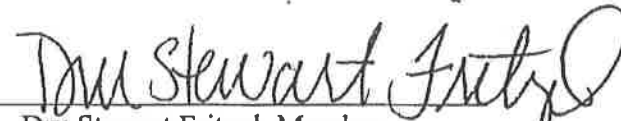
By: 
Dale Seufferling, President

CONTRACTOR:

BLISS SPORTS II, LC,
a Kansas limited liability company

By: 
Thomas S. Fritzel, Manager

and

By: 
Dru Stewart Fritzel, Member

DFC

DFC COMPANY OF LAWRENCE, L.C.,
a Kansas limited liability company

By: 
_____, Manager

The undersigned, being the Guarantors under a certain Guaranty of Payment and Performance attached as Exhibit One to the Infrastructure Improvements Construction Contract (as defined above), acknowledge that that their obligations to RCP, LLC under said guaranty are not affected by the execution of the foregoing Consent.



Thomas S. Fritzel

and



Dru Stewart Fritzel

EXHIBIT A

(Copy of DFC Subcontract)

BLISS SPORTS II, LC

STANDARD SUBCONTRACT AGREEMENT

ARTICLE 1 - Agreement

This Agreement made this ____ day of _____, 2013, and effective the ____ day of _____, 2013, by and between Bliss Sports II, LC, hereinafter called the Contractor, and DFC Company of Lawrence, L.C., hereinafter called the Subcontractor, to perform part of the Work on the following Project:

PROJECT: **Rock Chalk Park**
 Lawrence, Kansas

OWNER: RCP, LLC
 189 Constant Avenue
 Lawrence, KS 66047

ARCHITECT: Paul Werner Architects
 123 West 8th
 Lawrence, Kansas 66044

CONTRACTOR: BLISS SPORTS II, LC
 209 Fall Creek Road
 Lawrence, Kansas 66049

SUBCONTRACTOR: DFC COMPANY OF LAWRENCE, L.C.
 P.O. Box 721
 Lawrence, KS 66044-0646

CONTRACT PRICE: \$12,261,426.65

ARTICLE 2 - Scope of Work

2.1 Subcontractor's Work. The Contractor employs the Subcontractor as an independent contractor, to perform the work described in Article 16. The Subcontractor shall perform such work (hereinafter called the "Subcontractor's Work" or the "Work") under the general direction of the Contractor and in accordance with this Agreement and the Contract Documents.

2.2 Contract Documents. The Contract Documents, which are binding on the Subcontractor, are set forth in Article 16. Upon the Subcontractor's request, the Contractor shall furnish the Subcontractor with a copy of any part of these documents, with the amount of all payments and prices deleted.

ARTICLE 3 - Schedule of Work

3.1 Time Is of Essence. Time is of the essence for both parties, and they mutually agree to see to the performance of their respective work and the work of their subcontractors and suppliers, so that the entire Project may be completed in accordance with the Contract Documents.

3.2 Priority of Work. The Contractor shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely performance and completion of the Subcontractor's Work.

3.3 Coordination with Subcontractors. The Subcontractor shall coordinate its Work with all other contractors, subcontractors, and suppliers so as not to delay, interfere or damage such other contractors', subcontractors', or suppliers' Work or performance.

If the Subcontractor should unreasonably fail to fulfill this obligation, then the Subcontractor shall be directly responsible to such other entity or entities for all damages. If other contractors, subcontractors or suppliers should delay, interfere or damage the Subcontractor's Work, or cause the cost for performing such Work to increase, then the Subcontractor shall seek its damages from such other contractor, subcontractor or supplier directly, and shall not have any right to seek payment from the Contractor. If such event is beyond the Subcontractor's control and without its fault or negligence, the Subcontractor shall be entitled to submit to the Contractor a request for an extension of its time in which to perform its Work.

3.4 Commencement and Completion. The Subcontractor shall commence its Work within Five (5) days of notice to proceed from the Contractor, and if such Work is interrupted for any reason, the Subcontractor shall resume such Work within two (2) working days from the Contractor's notice to do so. Except as extended by Article 3.2 of this Contract, the Subcontractor's Work shall be completed per the progress schedule.

ARTICLE 4 - Contract Price

The Contractor agrees to pay to the Subcontractor for the satisfactory performance of the Subcontractor's Work the sum of \$12,261,426.65 in accordance with Article 5, subject to additions or deductions described Article 6.

ARTICLE 5 - Payment

5.1 General Provisions.

5.1.1 Payment Use Restriction. No payment received by the Subcontractor shall be used to satisfy or secure any indebtedness other than owed by the Subcontractor to a person furnishing labor or materials for use in performing or incorporation into the Subcontractor's Work.

5.1.2 Payment Use Verification. The Contractor shall have the right at all times to contact the Subcontractor's subcontractors and suppliers to ensure that they are being paid by the Subcontractor for labor or materials furnished for use in performing the Subcontractor's Work.

5.1.3 Lien Waivers and Affidavits. As a prerequisite for payment, the Subcontractor shall provide, in a form substantially in accordance with Exhibit "A" attached hereto, a lien waiver and release, together with any affidavits that may reasonably be requested by the Contractor, concurrently with any application for progress payment in accordance with subparagraph 5.2.1 of this Agreement. Such waivers may be made conditional upon payment.

5.1.4 Subcontractor Payment Failure. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontractor's Work are not being paid, the Contractor shall give written notice of such claim or lien to the Subcontractor and may take any steps deemed necessary to ensure that any progress payment shall be utilized to pay such obligations.

5.1.5 Payment Not Acceptance. Payment to the Subcontractor is specifically agreed not to constitute or imply acceptance by the Contractor or the Owner of any portion of the Subcontractor's Work.

5.2 Progress Payments.

5.2.1 Application. The Subcontractor's progress payment application for Work performed in the preceding payment period shall be submitted to the Contractor in accordance with the terms of this Agreement for approval of the Contractor and Architect. The Contractor shall forward, without delay, the approved value to the Owner for payment.

5.2.2 Retainage/Security. The rate of retainage shall not exceed the percentage retained from the Contractor's payment by the Owner for the Subcontractor's Work provided the Subcontractor furnishes a bond or other security to the satisfaction of the Contractor.

However, if the Subcontractor does not provide such bond or security, the rate of retainage shall be Five percent (5%); this sentence shall not, however, be considered to fulfill the Subcontractor's obligation to provide a bond if otherwise required by this Agreement.

5.2.3 Time of Application. The Subcontractor shall submit progress payment applications to the Contractor no later than the 25th day of each payment period for Work performed up to and including the 24th day of the payment period indicating Work completed and, to the extent allowed under Article 5.2.4, materials suitably stored during the preceding payment period.

5.2.4 Stored Materials. Unless otherwise provided in the Contract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontractor's Work but delivered and suitably stored at the site or at some other location agreed upon in writing. Approval of payment application for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment or otherwise protect the Owner's and

Contractor's interests therein, including transportation to the site. The risk of loss shall remain with the Subcontractor until final acceptance of the project by the Owner.

5.2.5 Time of Payment. Progress payments to the Subcontractor for satisfactory performance of the Subcontractor's Work shall be made no later than seven (7) days after receipt by the Contractor of payment from the Owner for such Subcontractor's Work.

5.3 Final Payment.

5.3.1 Application. Upon acceptance of the Subcontractor's Work by the Owner, the Contractor, and if necessary, by the Architect, and upon the Subcontractor furnishing evidence of fulfillment of the Subcontractor's obligations in accordance with the Contract Documents, the Contractor shall forward the Subcontractor's application for final payment at the next payment period.

5.3.2 Requirements. Before the Contractor shall be required to forward the Subcontractor's application for final payment to the Owner, the Subcontractor shall submit to the Contractor:

- (a) satisfaction of required closeout procedures; and
- (b) any data required by the Contractor or Owner, such as receipts, warranties, manuals, affidavits, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner.

Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontractor's Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed hereunder, or for faulty or defective work appearing after final payment.

5.3.3 Time of Payment. Final payment of the balance due of the contract price shall, subject to the following conditions precedent, be made to the Subcontractor:

- (a) upon receipt of the Owner's waiver of all claims related to the Subcontractor's Work except for unsettled liens, unknown defective work, and non-compliance with the Contract Documents or warranties; and
- (b) within seven (7) days after receipt by the Contractor of final payment from the Owner for such Subcontractor's Work.

5.3.4 Final Payment Delay. If the Owner or its designated agent does not issue a Certificate for Final Payment or the Contractor does not receive such

payment for any cause that is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontractor's Work. At the Subcontractor's request and joint expense, and to the extent agreed upon in writing, the Contractor shall institute all reasonable legal remedies to mitigate the damages and pursue full payment of the Subcontractor's application for final payment including interest thereon.

5.4 Late Payment Interest. To the extent obtained by the Contractor under the Contract Documents, progress payments or final payment due and unpaid under this Agreement shall bear interest from the date payment is due at the rate provided in the Contract Documents, or, in the absence thereof, at the legal rate prevailing at the place of the Project.

ARTICLE 6 - Changes, Claims and Delays

6.1 Changes. When the Contractor so orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Work that are within the general scope of the Subcontractor's Work. Adjustments in the contract price or contract time, if any, resulting from such changes shall be set forth in a Subcontract Change Order pursuant to the contract Documents.

No such adjustment shall be made for any such changes performed by the Subcontractor that have not been so ordered by the Contractor.

6.2 Claims. The Subcontractor shall have no greater right or claim against the Contractor than the Contractor has against the Owner, and, the Contractor shall not be liable to the Subcontractor in excess of any sum actually received from the Owner on behalf of the Subcontractor. The Contractor and the Subcontractor shall cooperate with each other in the presentation of all claims and causes of action against the Owner. As a condition precedent to the Subcontractor's proceeding against the Owner in the Contractor's name, the Subcontractor shall provide adequate security so as to protect the Contractor and the Contractor's other subcontractors and suppliers against counterclaims and causes of action by the Owner. The Subcontractor shall also provide evidence, satisfactory to the Contractor, that if the Owner asserts claims and causes of action against the Subcontractor through the Contractor, the Subcontractor can satisfy any such claims or causes of action. If the Contractor permits the Subcontractor to proceed without total security being provided to the Contractor's satisfaction, then the Contractor has the right to approve or reject the legal representation

selected by the Subcontractor, and this right will not create any liability on the Contractor.

6.3 Delay. If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work shall be extended by Change Order to the extent obtained by the Contractor under the Contract Documents and the Schedule of Work shall be revised accordingly.

The Contractor shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of delays, hindrances, interferences or other similar events caused by any person not a party to this Agreement unless the Contractor has first recovered the same on behalf of the Subcontractor from such person, it being understood and agreed by the Subcontractor that, apart from recovery from such person, the Subcontractor's sole and exclusive remedy for delay, hindrance, interference or other similar event shall be an extension in the time for performance of the Subcontractor's Work.

6.4 Liquidated Damages. If the Contract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Contract Documents, and are so assessed, then the Contractor may assess such damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay; however, the amount of such assessment shall not exceed the amount assessed against the Contractor.

Liquidated damages, as assessed against the Contractor for the Subcontractor's default, may be but one item of the actual damages that may be incurred by the Contractor, and that the Contractor may assess against the Subcontractor. The proportionate assessment of liquidated damages, as provided in this Article, shall not limit the Contractor's right to collect from the Subcontractor the additional actual damages incurred by the Contractor as a result of the Subcontractor's default.

ARTICLE 7 - Contractor's Obligations

7.1 Obligations Derivative. The Contractor binds itself to the Subcontractor under this Agreement in the same manner as the Owner is bound to the Contractor under the Contract Documents. The Contractor owes no greater duty or obligation to the Subcontractor than that which the Owner owes to the Contractor.

7.2 Authorized Representative. The Contractor shall designate one or more persons who shall be the Contractor's authorized representative(s) a) on-site and b) off-site. Such authorized representative(s) shall be the only person(s) the Subcontractor shall

look to for instructions, orders and/or directions, except in an emergency.

7.3 Storage Allocation. The Contractor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontractor's Work. The Subcontractor shall retain the risk of loss.

7.4 Timely Communications. The Contractor shall transmit, with reasonable promptness, all submittals, transmittals, and written approvals relating to the Subcontractor's Work.

ARTICLE 8 - Subcontractor's Obligations

8.1 Obligations Derivative. The Subcontractor binds itself to the Contractor under this Agreement in the same manner as the Contractor is bound to the Owner under the Contract Documents.

8.2 Responsibilities. The Subcontractor shall furnish all of the labor, materials, equipment, and services including, but not limited to, competent supervision, shop drawings, samples, certificates, tools, and scaffolding as are necessary for the proper performance of the Subcontractor's Work. The Contractor reserves the right to cancel this Agreement after three (3) days written notice to the Subcontractor's last known address if the Subcontractor fails or refuses to make the required submittals (shop drawings, manufacturer's data, samples, certificates, etc.) within thirty (30) days after the date of this Agreement. The approval of the Architect and/or the Contractor of shop drawings and/or submittals shall not relieve the Subcontractor of the responsibility for any deviations from the Contract Documents unless the Subcontractor has informed the Contractor, in writing, of such deviations at the time of submission and the Architect and/or Contractor have given written approval to the specific deviation, nor shall the approval of the Architect and/or Contractor relieve the Subcontractor from responsibility for errors or omissions in the shop drawings and/or submittals. The Subcontractor shall check and verify all dimensions and be responsible for their accuracy.

The Subcontractor shall provide a list of proposed sub-subcontractors and suppliers, and shall be responsible for taking field dimensions, providing tests, ordering of materials and all other actions as required to meet the Schedule of Work.

8.3 Temporary Services. The Subcontractor shall furnish all temporary services and/or facilities necessary to perform its Work, except as provided in Article 16. Article 16 also identifies those common temporary services (if any) that are to be furnished by the Subcontractor.

8.4 Coordination. The Subcontractor shall:

- (a) cooperate with the Contractor and all others whose work may interfere with the Subcontractor's Work;
- (b) specifically note and immediately advise the Contractor of any interference that may adversely affect the Subcontractor's Work; and
- (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

8.5 Authorized Representative. The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s) a) on-site and b) off-site. Such authorized representative(s) shall be the only person(s) to whom the Contractor shall issue instructions, orders or directions, except in an emergency.

8.6 Provision for Inspection. The Subcontractor shall notify the Contractor when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish the Contractor and its representatives adequate facilities for inspecting materials at the site or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment. The Subcontractor shall furnish to the Contractor, in such detail and as often as required, full reports of the progress of the Subcontractor's Work irrespective of the location of such Work.

8.7 Safety and Cleanup. The Subcontractor shall follow the Contractor's cleanup and safety directions, and shall:

- (a) at all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and
- (b) broom clean each Work area prior to discontinuing work in the same.

If the Subcontractor fails to immediately commence compliance with any safety duties or commence cleanup duties within 24 hours after receiving written notice from the Contractor, the Contractor may implement such safety or cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor.

The Subcontractor shall assume full responsibility to the Contractor for performance by the Subcontractor, its agents, employees and sub-subcontractors, for compliance with all applicable regulations issued pursuant to the Construction Safety Act of 1969 and the Occupational Safety and Health Act of 1970. The Subcontractor agrees to pay

all penalties imposed on the Contractor and/or other subcontractors resulting from the failure of the Subcontractor, its agents, employees, and Sub-Subcontractors to comply with said regulations.

8.8 Protection of the Work. The Subcontractor shall take necessary precautions to properly protect the Subcontractor's Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may so remedy and deduct the cost thereof from any amounts due or to become due the Subcontractor.

8.9 Permits, Fees and Licenses. The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Subcontractor's Work in accordance with the Contract Documents.

The Subcontractor shall be compensated for additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of the Agreement, but only to the extent the Contractor shall be entitled to payment therefor under the Contract Documents.

8.10 Non-Contracted Services. The Subcontractor agrees, except as otherwise provided in this Agreement, that no claim for non-contracted construction services rendered or materials furnished shall be valid unless the Subcontractor provides the Contractor notice prior to furnishing of the services or materials, except in an emergency affecting the safety of persons or property. Any such claim shall be in writing and delivered to the Contractor at least three (3) days prior to first furnishing such services or materials. The written charge for such services or materials shall be delivered to the Contractor no later than the fifteenth (15th) day of the calendar month following that in which the claim originated.

ARTICLE 9 - Subcontract Provisions

9.1 Layout Responsibility and Levels. The Contractor shall establish principal axis lines of the building and site whereupon the Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to set out or perform the Work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

9.2 Workmanship. Every part of the Subcontractor's Work shall be executed in strict accordance with the Contract Documents in a sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in the Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work, and shall be new, except such materials as may be expressly provided in the Contract Documents to be otherwise.

9.3 Materials Furnished by Others. In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

9.4 Substitutions. No substitutions shall be made in the Subcontractor's Work unless permitted in the Contract Documents and only then upon the Subcontractor first receiving all approvals required under the Contract Documents for substitutions. The Subcontractor shall indemnify the Contractor for any increased costs incurred by the Contractor as a result of such substitutions, whether or not the Subcontractor has obtained approval for them.

9.5 Privity. Until final completion of the Project, the Subcontractor agrees not to perform any Work directly for the Owner or directly with the Owner's representatives in connection with the Project, unless otherwise directed in writing by the Contractor. All work for the Project performed by the Subcontractor shall be processed and handled exclusively for the Contractor.

9.6 Contract Bond Review. The Contractor's Payment Bond for the Project, if any, may be reviewed and copied by the Subcontractor.

9.7 Subcontractor's Bonds. The Subcontractor shall, if requested by the Contractor, within fifteen (15) days from the date of this Agreement and before commencing work on the Project, furnish and pay for a performance bond with the Contractor named as obligee in a sum equal to that payable to the Contractor under this Agreement or, at the Contractor's request, to the Owner, with surety thereon satisfactory to the Contractor for the faithful performance of this Agreement and each and all of its stipulations and agreements. Within such period of time the Subcontractor shall, if requested by the Contractor, also furnish and pay for a payment bond with the Contractor and/or the Owner named as

obligee in a sum equal to that payable herein to Subcontractor under this Agreement with surety thereon satisfactory to the Contractor for the payment of all persons furnishing labor, services, equipment or materials used or purchased for use in the Work covered by this Agreement with surety thereon satisfactory to the Contractor for the payment of all persons furnishing labor, services, equipment or materials used or purchased for use in the Work covered by this Agreement. Should any contract modifications result in an increase in the amount of this Agreement, the Subcontractor shall increase the amounts of such bonds accordingly, and it will be the responsibility of the Subcontractor to include in its proposal the cost of additional bond premiums to cover the additional amount. Anything herein to the contrary notwithstanding, if the Subcontractor fails to furnish such bonds before commencing Work hereunder, or to increase the amounts of such bonds as required when there shall be an increase in the amount of this Agreement, the Contractor then or at any time thereafter shall be justified in declaring the Subcontractor to be in default hereunder and to have breached this Agreement, and the Contractor may declare this Agreement to end, and the Subcontractor shall be liable to the Contractor for any and all damages as a result of such default and breach and shall not be entitled to any payment for or in respect to any Work done at the site of said project or elsewhere, or to reimbursement or compensation for orders placed or anything else done in preparation for, or performance of, the Work described herein, and no payment made or forbearance granted by the Contractor shall operate as a waiver of the rights herein granted to the Contractor.

9.8 Warranty. The Subcontractor warrants its Work against all deficiencies and defects in materials and/or workmanship and as called for in the Contract Documents. The Subcontractor agrees to satisfy such warranty obligations that appear within the guarantee or warranty period established in the Contract Documents without cost to the Owner or the Contractor. If no guarantee or warranty is required of the Contractor in the Contract Documents, then the Subcontractor shall guarantee or warranty its Work as described above for the period of one year from the date(s) of substantial completion of all or a designated portion of the Subcontractor's Work or acceptance or use by the Contractor or Owner of designated equipment, whichever is sooner.

The Subcontractor further agrees to execute any special guarantees or warranties that shall be required for the Subcontractor's Work prior to final payment. The Subcontractor shall deliver to the Contractor,

with final draw request, Owner's Manuals for all equipment installed.

ARTICLE 10 - Recourse by Contractor

10.1 Failure of Performance

10.1.1 Notice to Cure. If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or it fails to make prompt payment for its workers, sub-subcontractors or suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, and fails within three (3) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the Contractor, without prejudice to any of its other rights or remedies, shall have the right to any or all of the following:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as the Contractor deems necessary for the completion of the Subcontractor's Work, or any part thereof, that the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, which shall be liable for the payment of such cost, including reasonable overhead, profit, and attorney's fees;
- (b) contract with one or more additional contractors to perform such part of the Subcontractor's Work as the Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to the Subcontractor;
- (c) withhold payment of any monies due the Subcontractor pending corrective action to the extent required by and to the satisfaction of the Contractor and Owner; and
- (d) in the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice.

10.1.2 Termination by Contractor. If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) working days after receipt by the Subcontractor of the notice issued under Article 10.1.1, then the Contractor may, in lieu of or in addition to Article 10.1.1, issue a second written notice, by certified mail, to the Subcontractor and its surety, if any. Such

notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) working days after receipt by the Subcontractor of the notice, the Contractor may terminate this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to the Subcontractor to complete the Subcontractor's Work. The Subcontractor automatically offers an assignment to the Contractor of any or all subcontracts and purchase orders that Subcontractor previously entered, for Contractor's discretionary acceptance. The Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors, as the Contractor deems necessary to maintain the orderly progress of the Work.

All of the costs incurred by the Contractor in so performing the Subcontractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the subcontract price.

10.1.3 Termination for Convenience. The Contractor may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of the Contractor.

10.1.4 Use of Subcontractor's Equipment. If the Contractor performs Work pursuant to this Article or sublets such Work to be so performed, the Contractor and/or the persons to whom Work has been sublet shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by belonging or delivered to the Subcontractor and located at the Project or other designated storage location.

10.2 Bankruptcy.

10.2.1 Termination Absent Cure. Upon the appointment of a receiver for the Subcontractor or upon the Subcontractor making an assignment for the benefit of creditors, the Contractor may terminate this Agreement upon giving three (3) working days written notice to the Subcontractor and its surety, if any. If an order for relief is entered under the bankruptcy code with respect to the Subcontractor, the Contractor may terminate this Agreement by giving three (3) working days written notice to the Subcontractor, its trustee, and its surety, if any, unless the Subcontractor, the surety, or the trustee:

- (a) promptly cures all defaults;

- (b) provides adequate assurances of future performance;
- (c) compensates the Contractor for actual pecuniary loss resulting from such defaults; and
- (d) assumes the obligations of the Subcontractor within the statutory time limits.

10.2.2 Interim Remedies. If the Subcontractor is not performing in accordance with the Schedule of Work at the time of entering an order for relief, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work.

The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees.

The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the contract price.

10.3 Suspension by Owner. Should the Owner suspend its contract with the Contractor (the "Prime Contract") or any part of such contract, which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and, upon receipt of said notice, the Subcontractor shall immediately suspend the Subcontractor's Work.

In the event of such Owner suspension, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents. The Contractor's obligations and the Subcontractor's rights are set forth in Article 7.1.

The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner's suspension and to permit the Subcontractor to prosecute such claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

10.4 Termination by Owner. Should the Owner terminate the Prime Contract or any part of the Prime Contract, which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and, upon receipt of such notice, this Agreement shall also be terminated and the Subcontractor shall immediately stop the Subcontractor's Work. The Contractor's obligations

and the Subcontractor's rights are set forth in Article 7.1.

In the event of such Owner termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents.

The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner's termination and to permit the Subcontractor to prosecute such claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

10.5 Wrongful Exercise. If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit, less prior payments made.

In no event shall the Contractor be obligated to pay the Subcontractor any monies in excess of the proportionate percentage of the Subcontractor's Work that has been properly completed and accepted by the Owner, including storage of materials. In the event this Agreement is terminated for the Contractor's convenience, the Contractor shall not be liable for unearned anticipated gross profit on the Subcontractor's Work not performed as of the termination date.

ARTICLE 11 - Labor Relations

The Subcontractor shall do whatever is necessary in the prosecution of its Work to assure harmonious labor relations at the Project and to prevent strikes or other labor disputes. Should there be a Work stoppage caused by strike, picketing, boycott, or by any voluntary or involuntary cessation of Work by employees of the Subcontractor, which in the judgment of the Contractor will cause, or may be likely to cause, unreasonable delay in the progress of the Work, then upon twenty-four (24) hours written notice, the Contractor shall have the right to declare the Subcontractor in default under this Agreement and to take such steps as are necessary to finish the uncompleted portion of the Subcontractor's Work. In such event, the Contractor shall have the right to take possession and use all of the Subcontractor's materials (exclusive of tools) intended for use on the Work. The cost of completion shall be charged against the Subcontractor's remaining interest in the contract price.

ARTICLE 12 - Indemnification

12.1 Subcontractor's Performance. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor and other contractors and subcontractors and all of their agents and employees from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work.

12.2 Compliance with Laws. The Subcontractor agrees to be bound by, and at its own cost, comply with, all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as "laws") applicable to the Subcontractor's Work including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other laws with which the Contractor must comply according to the Contract Documents.

The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributed to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.

ARTICLE 13 - Insurance

13.1 Subcontractor's Insurance. Prior to start of the Subcontractor's Work, the Subcontractor shall procure for the Subcontractor's Work and maintain in force Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance and all insurance required of the Contractor under the Contract Documents.

The Contractor, Owner and Architect shall be named as additional insureds on each of these policies except for Worker's Compensation.

This insurance shall include contractual liability insurance covering the subcontractor's obligations under Article 12.

13.2 Minimum Limits of Liability. The Subcontractor's Comprehensive General and Automobile Liability Insurance, as required by Article 13.1, shall be written with limits of liability not less than the following:

A. Comprehensive General Liability including completed operations:

1. Bodily Injury
\$1,000,000.00 Each Occurrence
\$1,000,000.00 Aggregate

2. Property Damage
\$1,000,000.00 Each Occurrence
\$1,000,000.00 Aggregate

B. Comprehensive Automobile Liability:

1. Bodily Injury
\$1,000,000.00 Each Person
\$1,000,000.00 Each Occurrence
2. Property Damage
\$1,000,000.00 Each Occurrence.

13.3 Waiver of Rights. The Contractor and Subcontractor waive all rights against each other and the Owner, the Architect, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment Insurance.

ARTICLE 14 - Arbitration

14.1 Agreement to Arbitrate. If there should develop between the Contractor and the Subcontractor any disagreement in connection with any matters relating to the fulfillment of this Agreement, it is agreed that it shall be settled by arbitration, with the Contractor appointing an arbitrator, the Subcontractor appointing an arbitrator, and such two arbitrators, in turn, appointing a third arbitrator. The three arbitrators so chosen shall promptly determine such controversy based upon their interpretation of the drawings, plans, and specifications referred to herein, in accordance with good building practices, and in accordance with the terms of this Agreement, which determination shall be final upon the parties hereto. All arbitration costs shall be divided equally between the Contractor and the Subcontractor.

14.2 Work Continuation and Payment. Unless otherwise agreed in writing, the Subcontractor shall carry on the Subcontractor's Work and maintain the Work Schedule pending arbitration, and, if so, the Contractor shall continue to make payments in accordance with this Agreement.

ARTICLE 15 - Contract Interpretation

15.1 Inconsistencies and Omissions. Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of the Subcontractor to so notify the Contractor in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, the Contractor shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with the Contractor's instructions.

15.2 Law and Effect. This Agreement shall be governed by the laws of the State of Kansas.

15.3 Severability and Waiver. The partial or complete invalidity of any one or more provisions of

this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in anyone or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

15.4 Assignability. This Agreement and the Contractor's and the Subcontractor's rights and obligations hereunder shall not be assignable without the written consent of the other party, except that the Contractor may, in its sole discretion, assign its rights and obligations to the Owner without the Subcontractor's written consent. The Subcontractor shall not subcontract all or any part of the Subcontractor's Work without the Contractor's written consent.

15.5 Entire Agreement. This Agreement is solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral.

ARTICLE 16 - Special Provisions

16.1 Precedence. It is understood the Work to be performed under this Agreement, including the terms and conditions thereof, is as described in Articles 1 through 16 herein together with the following Special Provisions, which are intended to complement same; however, in the event of any inconsistency, these Special Provisions shall govern.

16.2 Scope of Work. All work necessary or incidental to complete the following: all labor, material, insurance, taxes and subcontractors required to provide the following, unless otherwise noted:

Infrastructure Work, identified in **Exhibit I** of the Rock Chalk Park Development Agreement.

Work for the Project shall be in strict accordance with the Contract Documents and as more particularly, though not exclusively, specified in:

PRIME CONTRACT BETWEEN OWNER & CONTRACTOR

Paul Werner Architect: Rock Chalk Park Addition, Street, Storm Sewer, and Water Line Improvements. City Project # PW1315, Lawrence, Kansas. Project # 212440 Dated 10/10/2011 Release 1.0 12/20/12, Release 1.1 2/5/13, 1.2 2/22/13, 1.3 3/6/13, 1.4 3/19/13, 1.5 3/26/13, 1.6 4/2/13. Rock Chalk Park addition On-Site Improvements, Lawrence, Kansas. Project # 212-140 Release 1.0 2/26/13

Such other plans, specifications, and shop drawings as shall be mutually approved, from time to time, which are, by reference, made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR:
BLISS SPORTS II, LC

By: 

Name: _____

Title: _____

SUBCONTRACTOR :
DFC COMPANY OF LAWRENCE, L.C.

By: 

Name: _____

Title: _____